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Oceans and the law of the sea: Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks: recent developments and current status

Report of the Secretary-General

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I. Introduction

1. In its resolution 52/28 of 26 November 1997, the General Assembly recognized the significance of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("the Fish Stocks Agreement") as an important contribution to ensuring the conservation and management of straddling fish stocks and highly migratory fish stocks, and emphasized the importance of its early entry into force and effective implementation.

2. In the same resolution, the General Assembly called upon all States and other entities that had not done so to ratify or accede to the Agreement and consider applying it provisionally, and to also ensure that any declarations or statements that they had made or made when signing, ratifying or acceding to the Agreement were consistent with articles 42 and 43 of the Agreement.

3. While taking note with concern that many commercially important straddling fish stocks and highly migratory fish stocks had been subject to heavy and little-regulated fishing efforts, with some stocks continuing to be overfished, the General Assembly welcomed the fact that a growing number of States and other entities, as well as regional and subregional fishery management organizations and arrangements, had adopted legislation, established regulations or taken other measures to implement the provisions of the Agreement, and urged them to enforce those measures fully. It also called upon States and other entities and regional and subregional fishery management organizations and arrangements that had not done so to consider taking measures to implement the provisions of the Agreement.

4. The General Assembly then requested the Secretary-General to report to it at its fifty-fourth session and biennially thereafter on further developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, including the status and implementation of the Agreement, taking into account information provided by States, relevant specialized agencies, in particular the Food and Agriculture Organization of the United Nations (FAO), and other appropriate organs, organizations and programmes of the United Nations system, regional and subregional organizations and arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as other relevant intergovernmental bodies and non-governmental organizations, and urged those that had not done so to provide information to the Secretary-General to ensure as comprehensive a report as possible.

5. Accordingly, the Secretary-General sent a note verbale to all States drawing their attention to General Assembly resolution 52/28. Letters were also addressed to relevant intergovernmental organizations, organizations and bodies of the United Nations system, as well as regional and subregional fisheries organizations and arrangements and relevant non-governmental organizations. In response, the Secretary-General received a number of submissions and comments. He wishes to express his appreciation for all the contributions.

II. Information provided by States

6. In its response dated 26 April 1999, China indicated that it had been involved in all negotiations on the Fish Stocks Agreement in an effort to have a positive effect on its final outcome. It was of the view that the Agreement would be of benefit in unifying standards relating to fishery activities on the high seas and help to strengthen international fishery cooperation and enhance the conservation and effective management of fisheries resources.

7. China pointed out, however, that the fact that there had not been sufficient consultations and negotiations on some major provisions might give rise to some difficulties in the implementation of the Agreement. Thus, upon signing the Agreement, it made a declaration concerning its understanding of the concepts of the flag State's authorization and use of force. China stressed in this respect that its concern was that the provisions of the Agreement dealing with the use of force might be abused by certain parties in some areas, jeopardizing the lives and the economic security of Chinese fishers. Consequently, to allay this concern, it had joined relevant regional fishery organizations, such as the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Indian Ocean Tuna Commission (IOTC) and participated in the establishment of regional conservation and management measures, with China's views being conveyed directly within these mechanisms. China indicated also that it had participated in multilateral scientific activities relating to the northern Pacific Ocean tuna and was engaged in the current negotiations on the management of tuna resources of the Central and Western Pacific Ocean.

8. In addition, China indicated that commercial fishing was a major industry in China and played an increasingly important role in ensuring food security. The conservation and rational use of the living resources of the sea as well as the sustainable development of fishery were its guiding principles for fishery development. In view of these, it had in 1995 instituted a ban on summer fishing in the East China Sea and the Yellow Sea and had extended since 1998 the period and the scope of the ban. As of 1999, a summer ban has been also applied in the South China Sea, and China's fishing output would experience a zero growth in 1999. China appealed therefore to other coastal States to adopt appropriate measures to conserve the fishery resources in the region.

9. In its reply of 28 April 1999, Turkmenistan stated that the Commission on the Biological Resources of the Caspian Sea, established in accordance with the Protocol of the meeting of representatives of fisheries authorities of Azerbaijan, Kazakhstan, the Russian Federation and Turkmenistan on 22 and 23 December 1992, was the only organization that regulated the conservation and management of fish stocks in the Caspian basin. Although the Agreement on the conservation and rational use of biological resources of the Caspian Sea was completed, the signing of the document at the governmental level had been postponed until a solution could be found to the question of the legal status of the Caspian Sea. Turkmenistan therefore called upon all riparian States of the Caspian Sea to sign the Convention on the Legal Status of the Caspian Sea, and then adopt the Agreement on the conservation and use of the biological resources of the Caspian Sea.

10. In its submission of 11 May 1999, Oman indicated that in order to apply the provisions of the Fish Stocks Agreement it had closely monitored fishing vessels targeting highly migratory fish stocks by requiring them to use longlines and by prohibiting them from using all types of purse-seines nets, as well as drift-nets. Oman had also sought to preserve its marine environment by monitoring pollution caused by fishing fleets on the high seas. Furthermore, the Marine Fisheries Act and the implementing regulations for the Fisheries and Protection of Living Marine Resources Act of Oman provided for full legal protection for highly migratory fish stocks, as well as for protection of the marine environment.

11. In its response of 8 June 1999, Tunisia stated that it had participated in efforts to conserve and manage straddling fish stocks and highly migratory fish stocks within the relevant regional fishery management organizations by concluding agreements relating to the stocks concerned, including agreements on the provisions of articles 8, 9 and 10 of the Fish Stocks Agreement. In this respect, Tunisia indicated that it had ratified the International Convention for the Conservation of Atlantic Tunas in 1997 and in 1998 had supported the strengthening of the role of the General Fisheries Commission for the Mediterranean (GFCM) in fisheries management. In addition, an implementing regulation was under preparation by the Ministry of Agriculture of Tunisia to strengthen domestic legislation relating to bluefin tuna in conformity with ICCAT recommendations.

12. In its reply of 15 June 1999, Cyprus indicated that monitoring of fishing activities fell under the jurisdiction of the Department of Fisheries of its Ministry of Agriculture, Natural Resources and Environment. It added that the entire policy for the registration under the Cyprus flag in accordance with the Register of Cyprus Ships and monitoring of fishing vessels operating on the high seas was under revision with the objective of harmonizing it with relevant law of the sea and European Union requirements. Amendments to the legislation under preparation provided for the introduction of a licensing system for the control of vessels fishing on the high seas and the application of prohibitively high fees for the issuing of such fishing licences would include the full cost of monitoring.

13. Cyprus stressed that securing a fishing licence would be a precondition to the registration of fishing vessels under the Cyprus flag in accordance with the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws 45/1963. Engagement in fishing activities without a fishing licence or in fishing activities in contravention of the terms of the licence, would expose the fishing vessel to the revocation of its Cyprus nationality and deletion from the Register of Cyprus Ships.

14. In its submission of 22 June 1999, Saudi Arabia stated that it had ratified UNCLOS in 1996 and was aware of the Convention provisions relating to straddling fish stocks and highly migratory fish stocks. It indicated that it was a party to many regional projects involving such fish stocks, including a study of Rubian fisheries in areas under the national jurisdiction of States members of the Gulf Cooperation Council and a comprehensive survey of sea-bottom fish stocks in the Persian Gulf, the Gulf of Oman, the Arabian Sea and the Red Sea. Those activities were aimed at preparing the ground for the future ratification of the Fish Stocks Agreement and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement).

15. In its reply of 24 June 1999, Finland informed the Secretary-General that it had begun preparations for the ratification of the Fish Stocks Agreement. The consent of Parliament would be required for the ratification of the Agreement, given the fact that certain legislative changes would be necessary. A government bill to that effect would be introduced in due course.

16. In its response of 24 June 1999, Thailand stated that it realized the importance of the Fish Stocks Agreement for the management of high-seas fisheries resources. Consequently, Thailand was considering whether it would accede to the Agreement in the future, taking seriously into consideration Thailand's high-seas fishery policy.

17. In its reply of 29 June 1999, Denmark informed the Secretary-General that the process of ratification was ongoing. It expected the ratification of the Agreement to be completed in the spring of 2000 at the latest.

18. In its submission of 30 June 1999, Argentina indicated that it had already ratified the Compliance Agreement in 1996 and the process of securing parliamentary approval for the ratification of the Fish Stocks Agreement was currently under way in the Congress, since its approval was required by the Constitution before the ratification of international conventions.

19. In addition, the Argentine Ministry of Agriculture, Livestock and Fisheries had adopted several conservation and management measures, such as: the establishment of a Fisheries Registry for commercial exploitation of living marine resources; an observer programme and inspection scheme; closed seasons, closed areas, catch restrictions on some species (Argentine hake); the application of the precautionary approach; use of selective fishing gear, minimum size requirements; ban on destructive fishing practices; and implementation of a satellite monitoring system (MONPESAT) for the Argentine fishing fleet.

20. In its response of 30 June 1999, Japan indicated that it had signed the Fish Stocks Agreement in 1996 and was currently examining its domestic laws and regulations with regard to whether they were consistent with the obligations set out in the Agreement in such a way that they would enable Japan to ratify the Agreement. Furthermore, Japan's fishery activities were conducted in accordance with The Fisheries Law, Living Aquatic Resources Protection Law of the country, which provides for measures for the management and conservation of fish stocks, including straddling and highly migratory fish stocks.

21. Japan also indicated that it was a member of various international fishery management organizations and had ensured that its fishing activities were conducted in a manner consistent with conservation and management measures under those organizations. In addition, it had reduced the number of tuna longline vessels, in order to secure sustainable use of tuna stocks, following the adoption of the International Plan of Action for the Management of Fishing Capacity at the twenty-third session of the FAO Committee on Fisheries (COFI) in February 1999.

22. In its submission of 30 June 1999, Mexico pointed out that it attached great importance to the sustainable use of high seas living resources and therefore it had promoted the adoption of measures to ensure their conservation and management. To this effect, it engaged in cooperation at the regional and international levels to achieve that objective.

23. Mexico indicated that while it was committed to the actions and principles in the Fish Stocks Agreement which, together with the recommendations contained in the Code of Conduct for Responsible Fisheries, had been elaborated in order to achieve a rational use of high seas living resources, it nevertheless continued to have reservations regarding certain aspects of the Agreement, especially the provisions relating to compliance and inspection procedures.

24. Mexico further indicated that in order to contribute to the sustainable use of living marine resources, it had participated in the negotiations leading to the adoption of the 1998 Inter-American Tropical Tuna Commission (I-ATTC) Agreement on the International Dolphin Conservation Programme, which assigns priority to tuna fishing to promote fishing practices which would avoid the catch and discard of juvenile tuna, with the aim of developing a sustainable fishery and reducing the incidental catch of non-target species, especially dolphins. In addition, Mexico had on 11 March 1999 deposited its instrument of acceptance of the Compliance Agreement and had also participated in a project developed by the Latin American Fishery Development Organization (OLDEPESCA) to support the regional implementation of international fisheries instruments, including the implementation of principles provided in the Fish Stocks Agreement and the Code of Conduct for Responsible Fisheries.

25. In its reply of 3 August 1999, Norway stated that it had already ratified the Fish Stocks Agreement in 1996. Pursuant to the provisions of the Agreement and the recommendations contained in General Assembly resolution 52/28, Norway had entered into agreements with other States in respect of the high seas area of the Barents Sea and had also adopted new fisheries regulations concerning the conservation and management of living marine resources.

26. Following trilateral negotiations between Norway, Iceland and the Russian Federation, an agreement to end unregulated fisheries of regulated stocks in the high seas area of the Barents Sea ("Loophole Agreement") was signed by the three parties in St. Petersburg on 15 May 1999. The trilateral agreement took note of the fact that the high seas "loophole" was entirely surrounded by areas under Norwegian and Russian fisheries jurisdictions. It also recognized the need for a management regime that would take into account the straddling and highly migratory nature of several fish stocks found in the loophole. According to the Loophole Agreement, the parties would allot each other quotas of fish within their respective exclusive economic zones, and furthermore Iceland would refrain from making any additional claims on Arctic cod and capelin. The Agreement entered into force on 15 July 1999.

27. Norway also informed the Secretary-General that on 4 March 1998, its Ministry of Fisheries (Directorate of Fisheries) had adopted new regulations requiring vessels flying the flag of Norway wishing to fish on the high seas for stocks that were not regulated by the Norwegian authorities to register beforehand with the Directorate. The Directorate may refuse to register a vessel if such refusal were justified by the circumstances deemed relevant in the case. Authorized fishing vessels operating on the high seas would then be required to report to the Directorate of Fisheries when a fishery was commencing or ending, and provide weekly catch reports specifying species and areas. Registration of a vessel is valid for one year. In addition, on 13 March 1998, Norway laid down very strict regulations requiring fishing vessels flying the Norwegian flag to hold special licences granted by the Norwegian authorities before they were allowed to conduct fishing operations in the Convention area of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), in accordance with relevant decisions of the Commission. Norwegian vessels would be required to carry satellite tracking equipment, inspectors and observers on board, and may be prohibited to fish for specific species or in specific areas. They would also be required to stop fishing operations when the total quota had been reached and provide notification and reporting of catch data.

28. Norway further reported that, on 19 February 1999, it had amended its 1994 regulations establishing the conditions for refusing or withdrawing fishing licences to foreign nationals in its exclusive economic zone on account of unregulated fishery on the high seas of a fish stock subject to regulations in Norway's exclusive economic zone, to include also fishing operations that had contravened regulatory measures laid down by regional or subregional fisheries management organizations or arrangements. In addition, it had provided inspectors, inspection vessels and aircraft to the North-East Atlantic Fisheries Commission (NEAFC) control scheme and enforcement in respect of fishing vessels operating in the NEAFC regulatory area. The scheme, which entered into force on 1 July 1999, included, *inter alia*, provisions on authorization to fish, notification of entry into and exit from the regulatory area, vessel monitoring system (VMS), catch reporting, inspection and surveillance, and infringement procedures.

29. In its submission to the Secretary-General dated 15 September 1999, New Zealand indicated that it was proceeding with the steps necessary for ratification of the Fish Stocks Agreement with a view to completing the process by the end of 1999. New Zealand would be in a position to ratify once the legislation bringing its domestic law into compliance with the Agreement had been brought into force.

III. Information provided by international organizations

A. Specialized agencies of the United Nations system

30. In its reply of 24 March 1999, the World Bank pointed out that, as a financial institution, it did not implement international agreements, although it did on occasion provide financial assistance for that purpose at the request of its member countries. In this respect, it indicated that the Bank, in collaboration with FAO and with financial assistance from Iceland, was preparing an implementing guide to the Fish Stocks Agreement and the Compliance Agreement. The guide would provide assistance to countries seeking to introduce legislation to meet obligations contained in those Agreements, with a view to ratifying one or both of them. The guide was scheduled to be completed by the end of June 1999.

31. In its response to the Secretary-General dated 19 July 1999, FAO submitted the following report:

"...

"3. Action taken by FAO to facilitate the implementation of the United Nations Fish Stocks Agreement

"FAO gives high priority to facilitating the acceptance, ratification or accession to international

fishery instruments as a means of bringing them into force as soon as possible, and at the same time supporting their full and effective implementation at all levels and by all those involved in the fisheries sector. Such efforts are ongoing activities in FAO. Indeed, they constitute an integral and important part of the Organization's Work Programme and include initiatives of both an informal and formal nature. Informally, FAO technical officers utilize routine field visits and other contacts with government representatives to urge that measures be taken domestically to accept, ratify or accede to international instruments, and that concrete measures be taken to implement these instruments. More formally, FAO raises the need for acceptance, ratification or acceptance of international instruments at forums including sessions of regional fishery bodies, international conferences, FAO meetings and formal consultations with FAO members. Moreover, the Organization technically supports initiatives such as the revision of regional fishery body mandates as a means of bringing them in line with the provisions of newly adopted instruments and the establishment of new regional fishery organizations or arrangements where existing bodies do not exist.

"Since the adoption of the Fish Stocks Agreement, the Compliance Agreement and the Code of Conduct for Responsible Fisheries, FAO has raised the question of acceptance, ratification or accession and the implementation of these instruments in two Circular State letters, the most recent being in May 1998. This letter had its origins in a request from the Twenty-second Session of the Committee on Fisheries (COFI). The letter was responding to a request from COFI that countries accept, ratify or accede to, as soon as possible, the Fish Stocks Agreement and the Compliance Agreement.

"FAO continues to emphasize that the early entry into force of the Fish Stocks and Compliance Agreements, and their implementation in concert with the Code of Conduct for Responsible Fisheries is essential to facilitate better fisheries management. Furthermore, even though these instruments have not yet entered into force, FAO has encouraged States to adopt elements of them when their respective fishery legislation is being revised and policies for the sector modified.

"3.1 Twenty-third Session of the Committee on Fisheries, Rome, 15-19 February 1999

"The Twenty-third Session of COFI met at FAO headquarters in Rome in February 1999. The issue of the acceptance, ratification or accession of the Fish Stocks Agreement and the Compliance Agreement, and the implementation of the Code of Conduct for Responsible Fisheries, were major agenda items. The report of the Session notes that:

> "'... A number of States reported that they had accepted the Compliance Agreement and/or ratified the Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks and called on other States to consider doing the same. Concern was expressed at the small number of countries that had accepted/ratified the two Agreements to date. The importance of the Compliance Agreement as a binding instrument to address the problem of vessels that undermined the effectiveness of internationally agreed conservation measures was emphasized. Some delegates suggested that the Compliance Agreement and the Plan of Action for the Management of Fishing Capacity could be supplemented by additional measures to address these fishing activities. The Committee underlined the important role that the regional fishery management organizations can play in respect of the issues of fishing capacity and illegal fishing activities in high seas.'

"A significant achievement of the Twenty-third Session of COFI was the adoption of the International Plan of Action for the Management of Fishing Capacity. The Plan is a comprehensive document designed to facilitate capacity reduction. Paragraph 29 of the Plan of Action urges States to participate in the Fish Stocks and Compliance Agreements as follows:

> "'... States should consider participating in international agreements which relate to the management of fishing capacity, and in particular, the Compliance Agreement and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.'

"...

"*3.2 FAO Ministerial Meeting on Fisheries, Rome, 10-11 March 1999*

"At the invitation of FAO's Director-General, Ministers responsible for fisheries met in Rome in March 1999 as a sign of their attachment to the implementation of the Code of Conduct for Responsible Fisheries. *Inter alia*, the Ministers expressed appreciation to FAO for its role in promoting the application of the Code of Conduct and the increasingly wide adoption of the Code by States and concerned organizations.

"The Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries was unanimously adopted by the Ministerial Meeting, which was attended by 126 members of the Organization. The Declaration, *inter alia*, referred to the Fish Stocks Agreement as follows:

> "'2. The Ministerial Meeting emphasized that the achievement of the sustainable management of both capture fisheries and aquaculture was of great importance for world food security, for the attainment of national economic and social goals and for the well-being and livelihoods of individuals and families involved in fisheries ... In this regard, while pleased at the entry into force of the United Nations Convention on the Law of the Sea, the Meeting noted that only a small number of countries had so far ratified the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.'
>
> "'...
>
> "'We, the Ministers and Ministers' representatives meeting in Rome on 10 and 11 March 1999, declare that, without prejudice to the rights and obligations of States under international law:
>
> "'(h) *Will take* necessary actions on a priority basis to become parties to the United Nations Convention on the Law of the Sea, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks so that their entry into force will be possible;'

"The Minister's Declaration made it very clear that the implementation of the instruments mentioned in the above preambular and operative paragraphs was seen as being important in addressing major problems facing marine fisheries. These problems were identified as, *inter alia*, the non-sustainable resource use, overfishing, destructive and wasteful fishing practices, excess fleet capacity and unregulated, unreported and illegal fishing activities.

"The Ministerial commitment to take action to ratify or accede to the United Nations Fish Stocks Agreement was an extremely positive and forceful initiative as a means of trying to bring the Agreement into force as soon as possible ...

"*3.3 Strengthening FAO regional fishery bodies and supporting the establishment of new organizations or arrangements*

"Regional fishery organizations or arrangements have a critical role to play in regional fisheries governance and particularly in the implementation of the Fish Stocks Agreement. Indeed, the international community expects that where such organizations or arrangements do not exist they will be established, and where they do exist, their mandates [will] be revised and strengthened, if this is necessary, so as to improve their effectiveness in fisheries conservation and management. Indeed, the Agreement provides direction to these organizations as to factors that should be taken into account in adopting conservation and management measures. In so doing the Agreement also encourages the bodies to promote an integrated, ecosystem-wide conservation and management system and to apply the precautionary approach in all aspects of their work.

"In January 1998, FAO's Director-General convened a High-level Panel of External Experts in Fisheries in Rome. The Panel, *inter alia*, considered the role of regional organizations or arrangements in fisheries management. The views expressed by the Panel substantiated and reinforced work being undertaken by FAO with respect to the need to enhance the role of regional bodies. In particular, the Panel noted that such organizations or arrangements were essential in reinforcing regional fisheries cooperation. Furthermore, the Panel pointed out that

recent events concerning fisheries conservation and management required that these organizations or arrangements should be strengthened to cope with new and additional responsibilities under recent instruments such as Agenda 21, the Fish Stocks Agreement and the Code of Conduct for Responsible Fisheries. The Panel expressed the view that the last 30 years had been essential for the collection of information and the acquisition of experience concerning the functioning of regional organizations or arrangements, but that the next 10 years would be important for the implementation and enforcement decisions made by [these] bodies.

"As a means of facilitating cooperation between FAO and non-FAO regional fishery organizations or arrangements, the High-level Panel of Experts recommended that FAO convene a meeting between these bodies. This meeting was convened in Rome in February 1999. Eighteen regional organizations participated in the meeting, 7 FAO bodies and 11 non-FAO organizations, together with representatives from two other cooperative mechanisms. The meeting examined issues affecting the performance of regional fishery organizations or arrangements, a multifaceted approach to fishery status and trends reporting, and regional fishery bodies or arrangements as vehicles for good fishery governance. On the issue of governance, FAO advised the meeting that the effectiveness of regional governance had been undermined by a failure by some States to accept and implement international instruments central to enhanced fisheries governance such as the Fish Stocks Agreement and the Compliance Agreement. The meeting arrived at a set of firm conclusions. Included was the proposal that regional fishery organizations or arrangements should continue to review and adapt, as appropriate, their mandates, structures and strategies. This was necessary to better play their increasingly important roles in the process of achieving sustainable fisheries development and to discharge their responsibilities in implementing the recent series of international instruments concerned with fisheries.

"In support of the Meeting of FAO and Non-FAO Regional Fishery Bodies or Arrangements, and as part of FAO's ongoing commitment to analyse developments with regional fishery organizations or arrangements, the Organization undertook a review of measures taken by these bodies to address contemporary fishery issues. This review, which also formed the basis of a document for the Twenty-third Session of COFI, covered 22 FAO and non-FAO regional fishery organizations or arrangements. It addressed steps being taken by regional bodies to implement the Fish Stocks Agreement, the Compliance Agreement and the Code of Conduct for Responsible Fisheries. The conclusion of the report, as reflected in the conclusion of the COFI document, was cautiously optimistic ...

"The Twenty-second Session of COFI (March 1997) and the Twenty-ninth Session of the FAO Conference recommended that FAO regional fishery bodies should be reviewed and evaluated in depth by their members to determine what measures might be appropriate to facilitate a strengthening of their performance. Subsequently, the High-level Panel of Experts endorsed this recommendation. At the Twenty-third Session of COFI, FAO was able to report in detail on steps taken to strengthen the functions and responsibilities of its regional organizations with a view to making them more effective vehicles for the conservation and management of fisheries. This report noted that eight of the nine FAO fishery bodies had considered action to strengthen their functions and responsibilities.

"FAO considers the strengthening of its regional fishery bodies as an important and continuous process. Efforts to this end are being continued, with emphasis on how these bodies might work concretely with their members to implement international instruments such as the Fish Stocks Agreement. However, it is recognized that many of the changes required in the process of implementation will necessarily be introduced on an incremental basis.

"In addition to supporting efforts to strengthen its own regional fishery organizations, FAO has been providing technical support for the establishment of two new regional fishery organizations or arrangements. Both of these bodies, discussed below, have been spawned directly by the Fish Stocks Agreement.

"..."

B. Organs, organizations and programmes of the United Nations system

32. In its reply of 21 July 1999, the United Nations Environment Programme (UNEP) stated that although it had not undertaken any specific activity towards full

implementation of the resolution during the reporting period, it had through its regular support to developing countries, tried to ensure that relevant resolutions on fisheries were reflected in the execution of its programmes in those countries. For instance, under its UNEP/UNDP Joint Project in Environmental Law and Institutions in Africa, it was supporting the development of a draft law on coastal and marine resources in Sao Tome and Principe. In that regard, UNEP would ensure that draft laws respected the fisheries conservation principles as reflected in General Assembly resolution 52/28.

C. Regional and subregional fisheries organizations and arrangements[1]

33. In its report to the Secretary-General dated 24 February 1999, the International Commission for the Conservation of Atlantic Tunas (ICCAT) pointed out that it had urged all the Contracting Parties to ratify the United Nations Fish Stocks Agreement. The Commission was very keen to implement the provisions of the Agreement, even before it entered into force. For that purpose it had established a study group that had considered the impacts of the Agreement on the work of the Commission. Conservation and management measures adopted by ICCAT were however considered to be in conformity with the provisions of the Fish Stocks Agreement (see A/54/429, paras. 268-269). In addition, the Working Group on Allocation Criteria, at a special meeting held in May/June 1999, took full account of the provisions of the Agreement regarding the criteria for allocating quotas for highly migratory stocks, while considering equity issues. Furthermore, the Working Group on Precautionary Approach, which first met in May 1999, was currently studying the scientific implications of the application of the precautionary approach to stock management, particularly in respect of Atlantic tunas and swordfish.

34. In its reply of 11 March 1999, I-ATTC reported that, in February 1998, it had agreed to review the functions of I-ATTC and its Convention and, if necessary to formulate possible amendments to the Convention. Such a review would take into account the relevant principles of international law related to the conservation and management of living marine resources, as reflected, *inter alia*, in the 1995 Fish Stocks Agreement.

35. I-ATTC also informed the Secretary-General that the Agreement on the International Dolphin Conservation Program, for which I-ATTC performed certain functions, had entered into force in February 1999. The Programme included objectives to ensure conservation of the ecosystems, as well as conservation and management measures aimed at ensuring the long-term sustainability of tuna stocks and other stocks of living marine resources associated with the tuna purse-seine fishery in the Agreement area. Management measures ought also to be consistent with the 1995 Fish Stocks Agreement and the Code of Conduct for Responsible Fisheries.

36. The South Pacific Forum Fisheries Agency (FFA) reported that it had been very actively encouraging its members to ratify or accede to the 1995 Fish Stocks Agreement and to take steps to implement it. As at 10 June 1999, eight FFA members had ratified or acceded to the Agreement.

37. In addition, FFA had provided to those members which had required it, legal assistance on the completion of domestic and international formalities related to the ratification or accession process. Such assistance was delivered in a number of ways, including through national capacity-building initiatives. Training courses were conducted by the Agency on aspects of the Fish Stocks Agreement and the Multilateral High-level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (MHLC), which was designed to implement the Agreement in the region. Negotiations within MHLC to adopt a convention for the conservation and management of highly migratory stocks were currently under way and involved all countries with a real interest in the tuna resources of the region (see A/54/429, paras. 291-292).

38. FFA indicated also that MHLC was an initiative begun in 1994 by FFA members and the United States of America, in view of the critical importance of the Agreement to FFA members. For some of them, tuna resources represented the only viable avenue for development. Thus, the need to secure long-term, sustainable resource use was paramount to the work of the Agency, and to that end efforts to encourage greater national participation in the development of the region's highly valuable tuna industry had been underscored by the South Pacific Forum. To facilitate rational management, FFA members were elaborating tuna management and development plans. Papua New Guinea and Solomon Islands had adopted such tuna management and development plans, and other countries were following suit.

39. In its response of 26 April 1999, the Western Central Atlantic Fishery Commission (WECAFC) reported that countries attending the twenty-fifth FAO Regional Conference for Latin America and the Caribbean (Bahamas, June 1999), to consider, *inter alia*, the implementation of the Code of Conduct for Responsible Fisheries in the region,

were requested to ratify or accede to the Fish Stocks Agreement and the Compliance Agreement. The same call was made in all fishery meetings in the subregion that were organized by FAO when the Code was considered in meetings.

40. WECAFC also indicated that, as a result of FAO technical assistance to the Organization of Eastern Caribbean States (OECS) members in 1997, a draft bill on harmonized OECS high seas fishing law, which was still to be adopted into legislation, took into account the provisions of the Fish Stocks and Compliance Agreements. As a follow-up initiative, fisheries administrators who attended an OECS Symposium on Fisheries Management and Development at Saint Vincent and the Grenadines in April 1999 were requested to encourage their respective Governments to adopt the draft bill.

41. In its reply of 28 May 1999, the Permanent Commission for the South Pacific indicated that it continued to follow closely developments relating to the Fish Stocks Agreement, in view of the fact that high seas fishing for those stocks was of great importance for each of its member countries. However, since none of its members had taken a final decision on whether to ratify/accede to the Agreement the Commission was not in a position to provide information on the implementation of General Assembly resolution 52/28.

42. In its report to the Secretary-General dated 15 June 1999, the Northwest Atlantic Fisheries Organization (NAFO) stated that the fundamental principles of management of straddling fish stocks in the north-west Atlantic Ocean had been incorporated in the 1979 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO Convention). The Convention applied to all fishery resources of the Convention area with the exception of highly migratory fish stocks, i.e. salmon and cetaceans.

43. In that regard, NAFO indicated that it had imposed a fishing moratorium on five straddling fish stocks to allow their stable recovery, pursuant to the scientific advice provided by its Scientific Council. NAFO also indicated that its conservation and enforcement measures constituted a broad range of rules and regulations that included, *inter alia*, allocations, catches, fish size, mesh size and trawls, vessel documentation, notification of vessels for fishing activities and a reporting system for vessel activity in fishing grounds (hail system). Under the Scheme of Joint International Inspection and Surveillance, Contracting Parties would provide information about these rules and regulations to the crews of their vessels and, for purposes of supervision and enforcement, to the Scheme inspectors. Each Contracting Party had a direct responsibility to ensure prevention and take steps against infringements and to report back to NAFO. The latest additions to the measures were the Program for Observers and Satellite Tracking and port inspections of all vessels fishing in the regulatory area.

44. Concerning the issue of the precautionary approach, NAFO stated that, as a result of several meetings within the Organization, there was a general consensus that the approach should be a tool and method integrated into management strategies of NAFO applied to fish stocks. As to the question of transparency, existing rules provided that observers may be invited to NAFO meetings, and the Organization's meetings were therefore open to observers.

45. The North-East Atlantic Fishery Commission (NEAFC) reported that the development of the legal framework for fisheries management following the adoption of the 1982 United Nations Convention on the Law of the Sea, and in particular the 1992 Rio Declaration on Environment and Development and the Fish Stocks Agreement had resulted in a new era for NEAFC. The decision to establish NEAFC as an independent body as of 1 March 1999 represented the Commission's resolve to implement more fully the provisions of the 1995 Agreement.

46. NEAFC added that its decision to develop an agreement on a new Scheme for Control and Enforcement in respect of Fishing Vessels in Areas beyond the Limits of National Fisheries Jurisdiction in the Convention Area was also aimed at facilitating implementation of the provisions of the Agreement. The Scheme allowed the inspection by one Contracting Party of the vessels of another Contracting Party on the high seas. It also required Contracting Parties to notify the NEAFC secretariat of the vessels that were authorized to fish on the high seas in the region, and to provide regular catch reporting to the secretariat. By January 2000, a satellite tracking system which would provide up-to-date information to Contracting Parties on all fishing activities in the regulatory area would make NEAFC the first regional fisheries organization in the world to have a fully automated computerized monitoring system.

47. With respect to measures to be taken against non-Contracting Parties fishing in the Convention area, NEAFC Contracting Parties agreed, *inter alia*, to prohibit landings of catches of NEAFC regulated stocks fished in contravention of NEAFC recommendations.

48. The secretariat of the Pacific Community (SPC) indicated that it had not been mandated by its governing body to support implementation of the Fish Stocks Agreement. However, several of its ongoing activities in the

Western and Central Pacific indirectly supported the implementation of certain provisions of the Agreement, including: (a) collection of information about fisheries for highly migratory fish species and non-target species by commercial vessels; (b) development of regular and incrementally more rigorous stock assessments of the major stocks supporting fisheries for the four tuna species; (c) scientific, biological and ecological advice to Governments participating in the multilateral high-level process leading towards the establishment of international agreement on the management and conservation of tuna stocks in the region; (d) consensus decisions of scientific experts from both coastal States and distant-water fishing nations on biological and ecological issues relevant to the management of tuna stocks; and (e) annual sessions of the SPC Standing Committee on Tuna and Billfish and subsidiary working groups.

49. The Asia-Pacific Fishery Commission (APFIC) reported it had little information concerning steps taken by its members to implement the Fish Stocks Agreement, and that few of them were actually engaged in high seas fishing. Thailand was likely to accede to the Agreement in the near future as part of its plans to expand its tuna fishing. APFIC would continue to encourage its members to ratify or accede to the Agreement.

50. The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) reported that it had encouraged its members to ratify and promote the entry into force of such international instruments as the Fish Stocks Agreement, the Compliance Agreement and the Code of Conduct for Responsible Fisheries. In that connection, CCAMLR noted that the entry into force of those instruments would contribute to the elimination of illegal, unregulated and unreported fishing in the Convention area.

51. CCAMLR pointed out that, bearing in mind articles 19 to 23 of the Fish Stocks Agreement, it agreed that an exchange of information should be established by CCAMLR members on all vessels known to have fished in contravention of CCAMLR conservation measures. The Commission also reiterated its invitation to international and regional fishery organizations to join in the exchange of information on illegal, unreported and unregulated fishing activities on the high seas. In addition, CCAMLR indicated that it had applied other aspects of the Fish Stocks Agreement, including, for example, the precautionary approach.

52. The Fishery Committee for the Eastern Central Atlantic (CECAF) stated that it had discussed the new responsibilities facing regional fishery bodies at its thirteenth and fourteenth sessions, held respectively in Dakar in December 1995 and in Nouakchott in September 1998. The agenda of its 1995 session contained a sub-item which dealt exclusively with the Fish Stocks Agreement and its implications for CECAF, and relevant documents highlighted, *inter alia*, the objective of the Agreement and how it could be interpreted and applied in the context of, and in a manner consistent with, the 1982 Convention.

53. In addition, CECAF noted that the Fish Stocks Agreement enshrined a number of new principles of international law, the most relevant of which perhaps was the precautionary approach. It had been pointed out that the application of the precautionary approach would require management authorities to take pre-emptive action where there was a risk of damage to the resources and the environment even in the absence of certainty about the impact or the causal relationships. Discussions on this matter involved an exhaustive consideration of the relevance of the Agreement to the Eastern Atlantic fisheries, in view of the fact that few straddling stocks occurred in the region and that highly migratory fish stocks were already covered by ICCAT, with which CECAF was already cooperating.

54. CECAF acknowledged also that many of the principles contained in the Agreement were applicable to all fisheries, with particular reference to those based on shared stocks that occurred throughout the CECAF region. The Committee had therefore made a specific recommendation urging its members to become parties to the Fish Stocks Agreement and had encouraged them to implement the relevant provisions dealing with the management of shared resources.

55. The General Fisheries Commission for the Mediterranean (GFCM) reported that the Assistant-Director General of Fisheries in his opening statement at the twenty-third session of GFCM in July 1998 had invited Commission members to ratify or accede to the Fish Stocks Agreement, although there was no specific agenda item that had addressed the issue. GFCM also pointed out that since fisheries in the Mediterranean were mainly of a high seas nature, any management measures adopted by the Commission were of relevance to the Agreement. However, it noted that its last two sessions had been devoted to the restructuring of the Commission and little time had been left for discussion of management issues.

56. The Indian Ocean Tuna Commission (IOTC) has advised that no concrete steps have been taken with respect to the Fish Stocks Agreement. However, non-Contracting Parties to IOTC that were qualified to ratify or accede to the Agreement had been contacted to encourage them to do so,

or at the very least to collaborate in the exchange of information, as called for in the Agreement.

57. In addition, IOTC had adopted at its third session (Mahé, Seychelles, December 1998) a resolution on members' mandatory statistical reporting standards, which were in conformity with the standards provided for in the Fish Stocks Agreement. The Commission had also instructed its secretariat to collect data on catches of non-target associated and dependent species. Another resolution adopted by IOTC dealt with the management of fishing capacity of long-distance tuna longline vessels and agreement was reached on a recommendation on registration and exchange of information on vessels, including flag-of-convenience vessels fishing for tropical tunas in the Commission's area of competence.

58. The IOTC secretariat pointed out, however, that some of the provisions of the Fish Stocks Agreement would require modification of the IOTC Agreement.

D. Other intergovernmental organizations

59. In its response of 15 March 1999, the Asian Development Bank stated that its policy on fisheries was in line with UNCLOS. Bank operations in the sector were based on the principles of equity, efficiency and sustainability, and assistance in fisheries would cover four areas: (a) policy support for the development of long-term sustainable fisheries management; (b) capacity-building for development and resource management; (c) creating and strengthening of productive capacity, infrastructure and services; and (d) regional cooperation. The Bank had also applied environmental guidelines for developing and implementing fisheries projects and had adopted a participatory approach to ensure acceptability of projects by their target beneficiaries. Moreover, projects were to be designed in a holistic manner, incorporating environmental and social as well as other concerns not included in conventional cost-benefit analyses. The impact on fisheries of the Bank's interventions in other sector projects was to be analysed and remedial measures taken wherever warranted.

60. In its reply of 22 March 1999, the Council of Europe reported that the Parliamentary Assembly of the Council on 24 September 1998 had adopted resolution 1170 on the sustainable exploitation of living marine resources, which, *inter alia*, called upon member States to ratify UNCLOS and the associated agreements, in particular the Fish Stocks Agreement.

61. In its submission of 1 July 1999, the European Union stated that the European Community had ratified UNCLOS, which required coastal States and high seas fishing States to cooperate for the conservation and management of straddling fish stocks and highly migratory species. The Council of the European Union had signed the Fish Stocks Agreement in June 1996 and agreed, by its decision 98/414/CE of 8 June 1998, to ratify the Agreement. The decision provided, however, that the deposit of instruments of ratification by the European Union would be made simultaneously with those of all of its members. The European Union wished to accede to the Agreement as soon as possible since its entry into force would allow a strict application and interpretation of the law of the sea and, in particular, the establishment of a global scheme for the control of high seas fishing coupled with procedures for the peaceful settlement of disputes. The process of ratification was currently under way in various States of the Union.

62. The European Union indicated that, during the time that the process of ratification was under way, its high seas fishing activities were being conducted in accordance with international law and in conformity with commitments agreed with regional fishery organizations. The European Community was a Contracting Party to nine regional fishery organizations within which it participated with a view to the strengthening of mechanisms for the management of living marine resources and the implementation of monitoring, control and surveillance schemes. The Community was also currently involved in the process of setting up new regional fishery bodies such as the South-East Atlantic Fisheries Organization (see A/54/429, paras. 278-279) and had requested membership in I-ATTC. It was also following closely the preparatory work for the establishment of a new regional fisheries organization in the Western and Central Pacific.

63. In addition, the Council of the European Union on 17 December 1998 had approved, as part of the European Community Common Fisheries Policy, a regulation that introduced new measures in the control regime of the monitoring, control and surveillance scheme for fishing activities. The new regulation would encompass fishing operations, trans-shipments, landings, trade, transportation and stocking of fish products, as well as registration of landings and sales.

64. The Southeast Asian Fisheries Development Centre (SEAFDEC) reported that the question of the Fish Stocks Agreement was considered under the agenda item dealing with "Special report on the activities in line with the SEAFDEC Strategic Plan" and in relation to the discussion on "Regional tuna fisheries development".

65. The Centre was developing regional guidelines for the Code of Conduct for Responsible Fisheries in relation with the Agreement. Phase I of the guidelines relating to fishing operations was successfully completed in November 1998 and was now ready for distribution. The second and third phases were focusing on aquaculture and fisheries management. Although the Fish Stocks Agreement was not a direct target of the exercise, it was understood that, as provided in article 3 of the Code of Conduct, regional implementation of the Code would be promoted in conformity with the provisions of the Agreement.

IV. Information provided by non-governmental organizations

66. In its response of 15 June 1999, the International Ocean Institute (IOI) indicated that it had contributed to the implementation of General Assembly resolution 52/28 through its training activities in various IOI centres. Training included information on the Fish Stocks Agreement as one part of the course addressing UNCLOS. IOI-South Pacific in Fiji was also participating in the TRAINFISH programme of FAO.

67. In addition, IOI, at the annual Pacem in Maribus conferences, was bringing to the attention of national authorities, decision makers and the private sector the situation regarding global and regional fisheries. The Halifax Declaration on the Ocean of the Pacem in Maribus Conference held at Halifax, Canada, in 1998 had highlighted many of the issues concerning the global fisheries, calling for joint actions of Governments and the industry to improve the situation. The Beijing Declaration of the 1996 Pacem in Maribus held in China had also called upon all nations to take all measures to enhance regional cooperation and organization which would be essential for the implementation of the Fish Stocks Agreement. Furthermore, IOI was pursuing work aimed at improving ocean governance and the sustainable use of marine resources within the framework of UNCLOS and the 1992 United Nations Conference on Environment and Development (UNCED), both of which would give impetus to the implementation of the resolution.

68. In its report to the Secretary-General dated 10 August 1999, Greenpeace International expressed the view that the Fish Stocks Agreement contained measures of direct relevance to the fisheries-related issues of concern to the United Nations General Assembly, and it was possible that it would enter into force soon. The Agreement required States to, among other things, minimize waste and discards and the catch of non-target species, protect biodiversity in the marine environment, take measures to prevent or eliminate overfishing and excess fishing, and to collect and share complete and accurate data concerning fishing activities, including vessel position and catch of target and non-target species. Those as well as other specified measures, in particular the requirement to apply the precautionary approach, if effectively implemented by States, could substantially enhance calls to eliminate destructive fishing practices and gear, reduce wasteful by-catch/discards, reduce fishing capacity to sustainable levels, bring illegal, unregulated and unreported (IUU) fishing under control and support actions to curb the flag-of-convenience (FOC) fishing problem. Greenpeace would encourage all States to make a commitment to ensure the rapid and effective implementation of the measures provided in the Agreement.

69. Greenpeace acknowledged that the Agreement had broken new ground in international law with respect to compliance and enforcement matters and could have a potential impact on IUU fishing activities conducted on the high seas. The Agreement provided that a State which was party to a regional conservation and management agreement was entitled to board and inspect a vessel of another party fishing in the high seas area covered by that regional agreement if the State whose vessel was fishing was party to the Fish Stocks Agreement. Greenpeace thus stressed the critical need for all States to become parties to the Agreement and abide by its measures, including the requirements to become parties to all relevant regional fisheries management organizations.

70. In that context, Greenpeace stressed the importance of strengthening regional fisheries management organizations and, in particular, the requirement in the Agreement to strengthen the capacity of developing and small island States to participate as equal partners in those organizations. Greenpeace remained concerned, however, by the global trends wherein developed countries continued to export their excess fishing capacity to ocean areas in developing and small island States (often supported by subsidies), while simultaneously increasing their imports of fish from areas under the jurisdiction of those countries, without providing the necessary assistance to enable them to develop and enforce their own fisheries conservation and management regimes.

71. Consequently, Greenpeace wished to draw special attention to the need to develop and expand the application of an effective mechanism within the context of regional fishery bodies whereby the operators of fishing enterprises in the region ought to contribute to a financial fund designed

to support enhanced conservation and management measures in the region. Such a fund should be managed by an independent committee, which would include non-governmental organization participation and effective representation of local fishing communities. I-ATTC had provided a useful model for such mechanisms.

Notes

[1] Reports were sent either directly to the Secretary-General or conveyed to the Secretary-General through FAO.

Annex

Status of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

(as at 30 September 1999)

States and one entity that have signed the Agreement (59)

Argentina, Australia, Austria, Bangladesh, Belgium, Belize, Brazil, Burkina Faso, Canada, China, Côte d'Ivoire, Denmark, Egypt, Fiji, Finland, France, Gabon, Germany, Greece, Guinea-Bissau, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Luxembourg, Maldives, Marshall Islands, Mauritania, Micronesia (Federated States of), Morocco, Namibia, Netherlands, New Zealand, Niue, Norway, Pakistan, Papua New Guinea, Philippines, Portugal, Republic of Korea, Russian Federation, Saint Lucia, Samoa, Senegal, Seychelles, Spain, Sri Lanka, Sweden, Tonga, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Vanuatu; European Union.

States that have ratified or acceded to the Agreement (24)

Bahamas, Canada, Cook Islands, Fiji, Iceland, Iran (Islamic Republic of), Maldives, Mauritius, Micronesia (Federated States of), Monaco, Namibia, Nauru, Norway, Papua New Guinea, Russian Federation, Saint Lucia, Samoa, Senegal, Seychelles, Solomon Islands, Sri Lanka, Tonga, United States of America and Uruguay.

States that have agreed to a provisional application of the Agreement: 0